

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Orlando Garcia,

Plaintiff,

v.

Jade Memorial LLC, a California
Limited Liability Company;
Pasadena Zankou, Inc., a
California Corporation; and Does 1-
10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American’s With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Orlando Garcia complains of Jade Memorial LLC, a California Limited Liability Company; Pasadena Zankou, Inc., a California Corporation; and Does 1-10 (“Defendants”), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He also suffers from Cerebral Palsy. He has manual dexterity issues. He uses a wheelchair for mobility.

2. Defendant Jade Memorial LLC owned the real property located at or

1 about 1296 E. Colorado Blvd., Pasadena, California, in January 2020.

2 3. Defendant Jade Memorial LLC owns the real property located at or
3 about 1296 E. Colorado Blvd., Pasadena, California, currently.

4 4. Defendant Pasadena Zankou, Inc. owned Zankou Chicken located at or
5 about 1296 E. Colorado Blvd., Pasadena, California, in January 2020.

6 5. Defendant Pasadena Zankou, Inc. owns Zankou Chicken
7 (“Restaurant”) located at or about 1296 E. Colorado Blvd., Pasadena,
8 California, currently.

9 6. Plaintiff does not know the true names of Defendants, their business
10 capacities, their ownership connection to the property and business, or their
11 relative responsibilities in causing the access violations herein complained of,
12 and alleges a joint venture and common enterprise by all such Defendants.
13 Plaintiff is informed and believes that each of the Defendants herein,
14 including Does 1 through 10, inclusive, is responsible in some capacity for the
15 events herein alleged, or is a necessary party for obtaining appropriate relief.
16 Plaintiff will seek leave to amend when the true names, capacities,
17 connections, and responsibilities of the Defendants and Does 1 through 10,
18 inclusive, are ascertained.

19
20 **JURISDICTION & VENUE:**

21 7. The Court has subject matter jurisdiction over the action pursuant to 28
22 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24 8. Pursuant to supplemental jurisdiction, an attendant and related cause
25 of action, arising from the same nucleus of operative facts and arising out of
26 the same transactions, is also brought under California’s Unruh Civil Rights
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is
2 located in this district and that Plaintiff's cause of action arose in this district.

3
4 **FACTUAL ALLEGATIONS:**

5 10. Plaintiff went to the Restaurant in January 2020 with the intention to
6 avail himself of its goods, motivated in part to determine if the defendants
7 comply with the disability access laws.

8 11. The Restaurant is facility open to the public, a place of public
9 accommodation, and a business establishment.

10 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
11 to provide wheelchair accessible dining surfaces in conformance with the ADA
12 Standards as it relates to wheelchair users like the plaintiff.

13 13. On information and belief, the defendants currently fail to provide
14 wheelchair accessible dining surfaces.

15 14. These barriers relate to and impact the plaintiff's disability. Plaintiff
16 personally encountered these barriers.

17 15. As a wheelchair user, the plaintiff benefits from and is entitled to use
18 wheelchair accessible facilities. By failing to provide accessible facilities, the
19 defendants denied the plaintiff full and equal access.

20 16. Even though the plaintiff did not confront the barriers, on information
21 and belief the defendants currently fail to provide wheelchair accessible self-
22 service counters.

23 17. Additionally, on information and belief the defendants currently fail to
24 provide wheelchair accessible sales counters.

25 18. Moreover, on information and belief the defendants currently fail to
26 provide wheelchair accessible restrooms.

27 19. Plaintiff seeks to have these barriers removed as they relate to and
28 impact his disability.

1 20. The failure to provide accessible facilities created difficulty and
2 discomfort for the Plaintiff.

3 21. The defendants have failed to maintain in working and useable
4 conditions those features required to provide ready access to persons with
5 disabilities.

6 22. The barriers identified above are easily removed without much
7 difficulty or expense. They are the types of barriers identified by the
8 Department of Justice as presumably readily achievable to remove and, in fact,
9 these barriers are readily achievable to remove. Moreover, there are numerous
10 alternative accommodations that could be made to provide a greater level of
11 access if complete removal were not achievable.

12 23. Plaintiff will return to the Restaurant to avail himself of its goods and to
13 determine compliance with the disability access laws once it is represented to
14 him that the Restaurant and its facilities are accessible. Plaintiff is currently
15 deterred from doing so because of his knowledge of the existing barriers and
16 his uncertainty about the existence of yet other barriers on the site. If the
17 barriers are not removed, the plaintiff will face unlawful and discriminatory
18 barriers again.

19 24. Given the obvious and blatant nature of the barriers and violations
20 alleged herein, the plaintiff alleges, on information and belief, that there are
21 other violations and barriers on the site that relate to his disability. Plaintiff will
22 amend the complaint, to provide proper notice regarding the scope of this
23 lawsuit, once he conducts a site inspection. However, please be on notice that
24 the plaintiff seeks to have all barriers related to his disability remedied. See
25 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
26 encounters one barrier at a site, he can sue to have all barriers that relate to his
27 disability removed regardless of whether he personally encountered them).

28

1 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
2 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
3 Defendants.) (42 U.S.C. section 12101, et seq.)

4 25. Plaintiff re-pleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 26. Under the ADA, it is an act of discrimination to fail to ensure that the
8 privileges, advantages, accommodations, facilities, goods and services of any
9 place of public accommodation is offered on a full and equal basis by anyone
10 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
11 § 12182(a). Discrimination is defined, inter alia, as follows:

- 12 a. A failure to make reasonable modifications in policies, practices,
13 or procedures, when such modifications are necessary to afford
14 goods, services, facilities, privileges, advantages, or
15 accommodations to individuals with disabilities, unless the
16 accommodation would work a fundamental alteration of those
17 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 18 b. A failure to remove architectural barriers where such removal is
19 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
20 defined by reference to the ADA Standards.
- 21 c. A failure to make alterations in such a manner that, to the
22 maximum extent feasible, the altered portions of the facility are
23 readily accessible to and usable by individuals with disabilities,
24 including individuals who use wheelchairs or to ensure that, to the
25 maximum extent feasible, the path of travel to the altered area and
26 the bathrooms, telephones, and drinking fountains serving the
27 altered area, are readily accessible to and usable by individuals
28 with disabilities. 42 U.S.C. § 12183(a)(2).

1 27. When a business provides facilities such as dining surfaces, it must
2 provide accessible dining surfaces.

3 28. Here, accessible dining surfaces have not been provided.

4 29. When a business provides facilities such as self-service counters, it must
5 provide accessible self-service counters.

6 30. Here, accessible self-service counters have not been provided.

7 31. When a business provides facilities such as sales or transaction counters,
8 it must provide accessible sales or transaction counters.

9 32. Here, accessible sales or transaction counters have not been provided.

10 33. When a business provides facilities such as restrooms, it must provide
11 accessible restrooms.

12 34. Here, accessible restrooms have not been provided.

13 35. The Safe Harbor provisions of the 2010 Standards are not applicable
14 here because the conditions challenged in this lawsuit do not comply with the
15 1991 Standards.

16 36. A public accommodation must maintain in operable working condition
17 those features of its facilities and equipment that are required to be readily
18 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

19 37. Here, the failure to ensure that the accessible facilities were available
20 and ready to be used by the plaintiff is a violation of the law.

21
22 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
23 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
24 Code § 51-53.)

25 38. Plaintiff repleads and incorporates by reference, as if fully set forth
26 again herein, the allegations contained in all prior paragraphs of this
27 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
28 that persons with disabilities are entitled to full and equal accommodations,

1 advantages, facilities, privileges, or services in all business establishment of
2 every kind whatsoever within the jurisdiction of the State of California. Cal.
3 Civ. Code §51(b).

4 39. The Unruh Act provides that a violation of the ADA is a violation of the
5 Unruh Act. Cal. Civ. Code, § 51(f).

6 40. Defendants' acts and omissions, as herein alleged, have violated the
7 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
8 rights to full and equal use of the accommodations, advantages, facilities,
9 privileges, or services offered.

10 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
11 discomfort or embarrassment for the plaintiff, the defendants are also each
12 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
13 (c).)

14
15 **PRAYER:**

16 Wherefore, Plaintiff prays that this Court award damages and provide
17 relief as follows:

18 1. For injunctive relief, compelling Defendants to comply with the
19 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
20 plaintiff is not invoking section 55 of the California Civil Code and is not
21 seeking injunctive relief under the Disabled Persons Act at all.

22 2. Damages under the Unruh Civil Rights Act, which provides for actual
23 damages and a statutory minimum of \$4,000 for each offense.

24 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
25 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

1 Dated: March 9, 2020

CENTER FOR DISABILITY ACCESS

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3 By:



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5 _____
6 Russell Handy, Esq.
7 Attorney for plaintiff
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